INDO-NEPALESE TREATY : RETROSPECT AND PROSPECT

BY

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One of the major points of friction that bedevilled Indo-Nepalese relations for nearly a year was the question of trade and transit. The conclusion of a new five-year trade and transit treaty between India and Nepal on 13 August 1971 brought to an end an unfortunate phase of misunderstanding and acrimony between the two neighbours. The present article proposes to discuss the main issues involved in the signing of the treaty, the factors which at last led to the conclusion of the treaty, and the provisions of the treaty in the light of its significance for Indo-Nepalese relations.

THE ISSUES

The 1960 trade treaty between India and Nepal expired on 31 October 1970. The year-long negotiations on a new trade and transit treaty were marked by deadlocks. The issues involved were mainly the question of preferences given by India to Nepal in regard to Nepalese exports to this country; the deflection of trade brought about by Nepal's fiscal and foreign trade policies; and transit routes.

When the first round of consultations between India and Nepal over the new treaty took place in August 1970, Nepal demanded the removal of all barriers to its exports to India. India was forced to point out the frequent abuse of that privilege by Kathmandu in the past. Nepal's territory was being used by unscrupulous Napalese and Indian businessmen to violate Indian foreign exchange and trade ragulations. Some glaring examples of such practices were the export of stainless steel and synthetic fabrics by Nepal to India when Nepal did not produce either of these but depended heavily on imports from third countries. But Kathmandu was not prepared to see the point. It stuck by the 1968 agreement which put some limit on such exports.[1] Failing to persuade Nepal, India put forward a proposal offering to allow imports of quantities above the Indian quota via the state trading corporation.

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1 In 1968, India and Nepal reached an agreement accordixg to which the quota of export of stainless steel and synthetie fabrics was fixed, peggin their trade to the 1967-68 level.

But Nepal's the then Commerce Minister, Navraj Subedi, rejected India's proposal saying that "in view of the open border and traditional pattern of Indo-Nepalese trade", the suggestion for bringing in the State Trading Corporation in trade between the two countries was not practicable.[2] In fact, there was no reason why the exchange of such goods as stainless steel and synthetic fabrics between India and Nepal should not take place through State trading agencies of the two countries, unless, in Rishikesh Shaha's words, either Government wanted to attract the odium of being called a "Government of black-marketeers for black-marketeers."[3]

On the question of deflection of trade, India objected to the Nepalese gift parcels and bonus scheme under which Indian export-import regulations were being by-passed. For the the past few years the Indian Government had been confronted with the menace of smuggling of certain goods from Nepal into India. The Nepalese initially smuggled from India goods such as row jute, mica and bristles. There goods were later exported to foreign countries. As a reward, Nepalese traders earned bonus vouchers in foreign exchange. Using these, they imported stainless steel and synthetic fibre far in excess of Nepal's own requirements. After processing, these goods were smuggled into India, enabling Nepalese traders to reap huge profits. At the same time, luxury goods—transistors, radios, scotch whisky and the like—imported into Nepal from Tokyo, Hongkong Singapore and Western Europe trickled into India from Nepal through the activities of the smugglers. This illicit trade reached a point where it had begun to hurt the Indian economy. India also felt sore about the diversion of Indian grown jute, a foreign exchange earner, into Nepal for the purpose of re-export as Nepalese produce. In certain years, the volume of such exports had exceedsd Nepal's production of the commodity. For example, while the total production of raw jute in 1968-69 was 33,000 tons; it exported 55,000 tons of raw jute during the same year,[4] It was really surprising how Nepal exported 22,000 tons more than its total production. It was an embarrassing situation that Indian jute smuggled into Nepal was exported to India as Nepalese jute. With a view to prevent this trade deflection India urged Nepal to discontinue its bonus vouchers scheme for exporters. But Nepal was not prepared to agree to this.

2 *The Times of India* (New Delhi), 2 November 1970.

3 *The Statesman* (Calcutta), 2 September 1970.

4 *The Indian Nation* (Patna), 4 November 1970.

Above all, the question of the transit facilities also proved to be a stumbling block. Nepal complained that it was not getting adequate transit facilities through India. Kathmandu claimed that Nepal demanded "nothing more and nothing less"[5] than the customary facilties available to other land-locked countries eleswhere under the established conventions, the implication being that such facilities were not available to Nepal. This attitude might have been influenced by the advice of foreign experts and consultants of whom there are quite a few in Kathmandu. But a glance at the prevailing arrangements would show that Nepal was already getting more than what international custom and usage enjoined. While Kathmandu demanded more storage space at Calcutta port on the plea of inadequate warehousing facilities there, a joint Indor-Nepalese inspection conducted in 1969 revealed that at no time had Kathmandu utilised more than an eighth of the 15,000 square feet earmarked for Nepal.[6] During the course of negotiations, while Kathmandu demanded 300,000 square feet of area at Calcutta port, New Delhi was willing to set aside 175,000 square feet of covered area for Nepal's exclusive use.[7] This was more than ten times the existing reserved area of 15,000 square feet. The view that the special transit facilities given to Afghanistan at Karachi port compared favourably with those Calcutta offered to Nepal[8] might appear a sound point in a propaganda offensive, but it was hardly substantiated by facts. From June 1969 Karachi had made available for Afganistan's transit an area of 13,714 square feet. Wharfage was being charged at Karachi at the usual rate on all in-transit goods to and from Afganistan. If delivery of goods was not taken within three days from the date of departure of the ship, goods were subjected to payment of demurrage. Compared to Karachi's arrangements for Afganistan's transit trade, Calcutta was offering Nepal 15,000 square feet for the latter's Cargo under a specially covered area. Accommodation had been offered for a Nepali costoms liason officer within this area. No rent was being charged on Cargo meant for the Government of Nepal. Storage rent totalling Rs. 57 lakhs was waived in 1969, for all Nepalese goods imported either by the Palace or the Government were stored free.[9] Thus India had been offering far greater transit facilities to Nepal compared with those offered

5 *The Statesman* (Calcutta), 2 September 1970.

6 *Ibid.*

7 *The times of India*, 30 December 1970.

8 *Ibid.*

9 *The Statesman* (Calcutta), 2 September 1970.

by Pakistan to Afganistan. It was also evident from impressive rise in Nepal's foreign trade. Were Kathmandu's complaints of a denial of adequate transit facilities through India justified, Nepal's trade with third countries could not have increased tenfold—from 2 million to 20 million in six eyars since 1962.[10]

As for land transit via Radhikapur, New Delhi pointed out that the land route to East Pakistan was not being put to any great use by Nepal. In view of Islamabad's refusal to allow Indian goods to be transhipped across Pakistani territory to Afganistan and vice-versa. India could not agree to give a land route accross Indian territory for Nepal to send goods to East Pakistan (Now Bangla Desh).[11]

In short, the Indian point was that India would do all it could to meet the legitimate development aspirations of Nepal, but it could not allow the special relationship to be used for downright smuggling and the flouting of Indian regulations.

Kathmandu was not prepared to accept any of these points. Instead, it let loose the propaganda blast to make India look like a big had neighbour ought to swallow or cripple small, under-developed, land-locked Nepal. Precocious in the ways of international politics, Kathmandu often flirted with Peking and Islamabad just to spite India. For a whole year official delegations from Kathmandu exasperated New Delhi by taking it time and again to the brink of a treaty but with-drawing in a huff at the last moment.

New Delhi, however, refused to be rattled by the propaganda let loose by Kathmandu. Instead, it first warmed Kathmandu that it could not give in on basic points or allow blatantly illegal policies to be legalised. After waiting for three months in the hope that Kathmandu would see reason, New Delhi announced on 1 January 1971 unilateral measures to keep Nepal's economy and trade going on in the absence of a treaty.

The factors behind the conclusion of the Treaty

It was against this background, after a meeting between King Mahendra and Indra Gandhi in New Delhi in June 1971, that the official talks began on 4 August 1971, and the new trade and transit treaty was concluded in Kathmandu on 13 August 1971. The treaty came into force on 15 August 1971 and will remain in force for an initial period of five

10 *Ibid.*

11 *Link* (New Delhi), 12 August 1971, p. 21.

years. It may be renewed for another period of five years. But the question arises : Why did Kathmandu fight so hard over points which in the end it conceded or agreed to be left to future joint consultations ?

Various factors were responsible for it. To begin with, Nepal found that for the seven months since the termination of the treaty at the end of the last year its export with India fell by Rs. 12 crores. At the same time, the Nepalese Government suffered a loss of revenue of Rs. 4 crores.[12] These were the main factors which compelled the Nepalese Goverment to revise its approach to the treaty.

Moreover, for a long time Nepal was toying with the idea of approaching the International Court of Justice to establish its right to unfettered access to sea and overland routes relying on old treaty and the international convention governing landlocked countries. India was not prepared to be bullied by such tactics. It was perhaps finally realised by Kathmandu that the verdict of the International Court might not go in its favour.[13]

Furthermore, there was perhaps a feeling in some quarters in Nepal that the midterm poll for the Lok Sabha in India might not result in any decisive victory for any party and that if a weak coalition Goverment came to power the climate would be more favourable to negotiate a treaty advantageous to Nepal. But the coming into power of a strong and stable Government with a massive majority might have dashed the hopes of these quarter.[14]

Finally, after his visits to India and the Soviet Union. King Mahendra might have begun to develop doubts about the policy of India-baiting campaign and playing up to Peking.[15] These developments were perhaps the principal factors which might have changed Nepal's earlier stand on the treaty.

Gainers Both

Whatever the reason, on 8 August 1971, officials of the two countries suddenly discovered solutions to all outstanding problems and the new treaty of trade and transit was signed on 13 August 1971. It has met all the essential points both sides has insisted on and is fair to both countries. In fact, the provisions of the treaty make it clear that there has been much give and take by both India and Nepal.

12 K. Rangaswamy, "Indo-Nepalse Treaty", *The Indian Nation*, 4 September 1971.

13 *Ibid.*

14 *Ibid.*

15 *Link*, 22 August 1971

For India the main problem was deflection of its trade and the treaty makes adequate provisions to prevent it. For example, Nepal has agreed, under Article VII of the treaty, "to co-operate effectively with India to prevent infringment and circumvention of the laws, rules and regulations in regard to matters relating to foreign exchange and foreign trade."[16] The 1960 trade treaty dealt with forign exchange violations only, while the new treaty covers foreign trade violations also. According to the protocol attached to the treaty Nepal has agreed to compile statistics and other information on domestic consumption and exports which will show up deflections. At the same time Nepal has agreed to "make thess statics and information available to India" and also "to exchange information regarding the measures taken to prevent the deflection of trade".[17] Besides, the protocol provides that "inadequacies found in the statistical and other information exchanged should be remedied hy periodical consultation".[18]

The foregoing alone would not suffice to prevent the export of smuggled gcods. Article XIV further prohibits the re-exports from Nepal to third countries of goods imported from India and products which contain materials imported from India and whose value is more than 50 percent of the ex-factory value of such product.[19] The same article also prohibits Nepal from re-exporting to India "of goods imported from third countries aud of products which contain imports from third countries exceeding 50 percent of the ex-factory value of such goods."[20] This will perhaps shut out the export to India of stainless steel utensils and synthetic fibre garments where the raw materials cost more than 80 percent. A certain amount of deflection will no doubt continue, but the scope for this has been narrowed down and the adverse impact on India's economy from trade deflection should be considerably reduced. Although it is next to impossible to prevent smuggling, the treaty and protocol will make life a little difficult for smugglers.

The protocol makes it clear that facilities for transit will be available only to goods specifically authorised and financed by the Government of Nepal. The Nepalese Government has agreed not to issue any import licences on the basis that the importer himself will

16 For Text of India-Nepal Trade, Tranait Treaty, see *The Times of India*, 17 August 1971.

17 *The Indian Nation*, 4 September 1971.

18 *Ibid.*

19 *The Times of India*, 17 August 1971.

20 *Ibid.*

arrange for the foreign exchange required.[21] The protocol also provides that certain procedures must be complied with before goods can be transported through India and Indian custom procedure will be far more elaborate subjecting goods in transist to check at various points by the Indian customs authorities.[22]

Nepal has also withdrawn its insistence on two separate treaties covering trade and transit and its plea for overland access to Radhikapur. In the past Nepal was interested in the overland route to East Pakistan through Radhikapur. Though in view of the developments in Bangla Desh India was not so averse to the land route to Radhikapur, the treaty makes no mention of Radhikapur.

However, in a letter exchanged between the Ministers of the foreign trade of the two countries, India has committed itself to provide overland routes to Nepal "through regional or sub-regional co-operation agreements when mutually satisfactory trade and transit agreements between India and other regional member countries concerned take place."[23] This has two obvious implications. First, so long as East Bengal is considered to be part of Pakistan, Islamabad will have to agree to the system. In other words, if Nepal wants transit facilities for trade with East Pakistan it will first be necessary for India to conclude separate arrangements with Pakistan. But India cannot agree to Pakistani goods being sent across Radhikapur to Nepal unless Pakistan agrees to similar facilities being given to India for its trade with Afganistan. Secondly, if Bangla Desh becomes free (now free), that country will have to agree to the system All this means that trade between Nepal and East Pakistan through Radhikapur will not be viewed in isolation but as part of regional arrangements and that this question will be sorted out when the political situation in the region improves.

The other interesting feature of the transit provisions in the treaty is that they are binding on both countries,[24] and hence visualise possible trade with China through Nepal.

Nepal has also got what it wanted. Firstly, under Article III, primary products of Nepal will have unrestricted entry into the Indian market and will also be exempted from customs duty.[25] Products of

21 *The Indian Nation*, 4 September 1971.

22 *Ibid.*

23 *The Statesman* (Calcutta), 19 August 1971.

24 See Article VIII, *The Times of India*, 17 August 1971.

25 *Ibid.*

Nepalese small scale units are also to be given the same excise duty concessions as Indian units. Under Article IV India has also agreed to give specially favourable treatment to manufactured articles from Nepal, on a non-reciprocal basis, provided these are made from Nepalese and Indian materials.[26]

Secondly, Nepal will get nearly twelve times more covered space at Calcutta port for storage of goods in transit.[27] Space will also be reserved for Nepal at Haldia port, when this port is ready.[28]

Thirdly, spart from the already existing rail route, Kathmandu has been offered the facility, for the first time, to take or send its goods by road from or to Calcutta port.[29]

Fourthly, customs procedures have been vastly simplified, thus removing a great irritant.[30]

Fifthly, Nepal can levy import duty on Indian goods without waiting for India' consent provided it is not more than what is levied in the case of most favoured nations.[31]

Finally, the real significance of the treaty is that it has restored normalcy in trade relations between the two countries. It has created an atmosphere of certainty in the field of commerce and industry and ensured suitable facilities to Nepal to develop its trade. By greatly liberalising imports of Nepalese raw materials and manufactures, it helps the Indian Government and Indian industrialists to encourage and participate in Napal's economic development.

Prospect

Thus the new treaty of trade and transit between India and Nepal appears to be an impressive document. If both countries co-operate in the treaty's implementation in the same spirit in which they were able to resolve outstanding differences, the treaty could become a model arrangement between a large and a small country, between a relatively developed and a less developed country, and between a landlocked country and a neighbour with access to the sea. In fact, if the miasma of suspicion and distrust of the past gives way to trust and goodwill there will be little difficulty in finding the solution of any other problems India and Nepal

26 *Ibid.*

27 *The Indian Nation*, 4 September 1971.

28 *The Statesman* (New Delhi), 17 August 1971.

29 *Ibid.*

30 *The Indian Nation*, 14 August 1971.

31 *Ibid.*, 4 September 1971.

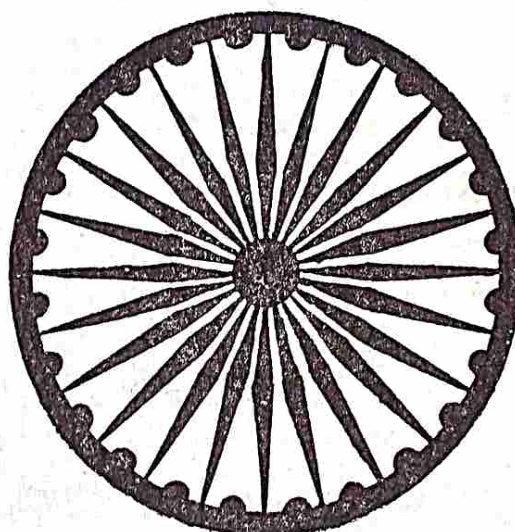
have much to gain from a smooth working of the treaty and much to lose if they ignore the constraints it imposes on both countries. The next five years will prove critical for Indo-Nepalese relations and the treaty provides an opportunity to lay the foundations for a more permanent relationthip.

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